IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4822 OF 2005
WITH
CRIMINAL APPLICATION NO.5034 OF 2005

WITH
CRIMINAL APPLICATION NO.6691 OF 2005

Sunil Lazarous Anthony ...Applicant
(In all Criminal Applications)

Vs.

The State of Maharashtra ...Respondent
(In all Criminal Applications)

Shri Shirish Gupte with Shri Subodh S. Desai for the Applicant in all Criminal Applications.
Ms S.D. Shinde, A.P.P. for the State in Criminal Application Nos.4822 of 2005 and 5034 of 2005.
Ms M.H. Mhatre, A.P.P. for the State in Criminal Application No.6691 of 2005.

CORAM : A. S. OKA, J.
DATE : OCTOBER 14, 2005.

P.C.:

1. These are the Applications for Anticipatory Bail filed by the same Applicant. Though the Applications relate to different offences registered at different Police Stations, since the offences are of similar nature, the Applications can be disposed of by common order.

2. Criminal Application No.4822 of 2005 relates to F.I.R. registered at the instance of an Officer of Bank of Baroda, Dighi Branch, Pune with Vishrantwadi Police Station. The case made out in the F.I.R. is that the Applicant who is the Proprietor of M/s.Eureka

Constructions has developed a property and constructed buildings consisting of several flats. The case made out in the F.I.R. is that the Applicant sold eight different flats to different purchasers. The Bank of Baroda, Dighi Branch, Pune sanctioned housing loan for purchasing the flats and loan amounts were released. As per usual practise of the bank, cheques representing the loan amounts were issued in the name of the Applicant-builder. From June 2004, the flat purchasers did not pay the instalments. Therefore, Bank Officers made inquiry by visiting the site and found that the flats in question were sold by the Applicant to different persons and some other Banks/ financial institutions had released housing loan in respect of said flats. It is stated in the F.I.R. that the outstanding amount of loan repayable to the Bank of Baroda is Rs.19,54,000/-(Rupees Ninteen Lacs Fifty Four Thoushand).

2. In Criminal Application No.5034 of 2005, the F.I.R. has been lodged by an Officer of the United Western Bank Ltd. with Vishrambaug Police Station. In the F.I.R. the allegations relate to the building project of the Applicant. It is stated in the F.I.R. that housing loan was released to eighteen different flat purchasers who were claiming to be the purchasers

from the Applicant and the loan amounts were released in favour of the Applicant. The allegation in the F.I.R. is that Central Bank of India, Shankarsheth Road branch, Pune submitted a letter to the United Western Bank for making inquiry whether five persons named in the letter were granted housing loan by the United Western Bank. It was stated by the Officers of Central Bank of India that inquiry is made in the Office of the Sub-Registrar at Haveli, Pune and it was revealed that in respect of the same flats, loan was obtained from the Central Bank of India where the loan has been released earlier by the United Western Bank. It is alleged that the eighteen flat purchasers to whom loan was released by the first informant-Bank had infact not purchased the flats and sale documents have been prepared in conspiracy with the Applicant. The allegation is that the Bank has been defrauded to the extent of Rs.69,14,503/-.

3. In Criminal Application No.6691 of 2005 the F.I.R. is filed by another Officer of the United Western Bank Ltd. The allegation is that about six flat purchasers who have allegedly purchased flats in the project of the Applicant were granted loan by the said Bank and the loan amounts were credited to the account of the Applicant. It is alleged that some of

the flats for which loan was granted by the first informant-bank were also sold by the Applicant to different flat purchasers and loan has been obtained from another bank.

4. In all cases sections 406, 420 and section 34 of the Indian Penal Code are invoked. In one case offence has been registered under section 467, 468 and 471 of the Indian Penal Code in adition to aforesaid offences.

5. The learned Senior Counsel appearing for the Applicant in these Applications submitted that no offence has been committed by the Applicant. As there was a delay on the part of the Municipal Corporation in releasing the necessary infrastructural facilities, number of purchasers cancelled the agreements and as a result of which the same flats were sold by the Applicant to third parties. He submitted that the new flat purchasers have obtained loan from Banking Institutions for which the Applicant cannot be blamed as on examination of various documents, the concerned banks have released the loan. He submitted that in case of cancelled agreements, the Applicant has paid back substantial amounts to the Bank and as of today a sum of Rs.One crore is payable by the Applicant to

different banks. He submitted that in two out of three cases, atleast in case of twenty-four flats, the banks have taken action and possession of the flats has been taken over. He submitted that the Applicant is ready and willing to come forward with a programme for payment of sum of Rs. One crore to different banks within a period of six months. He submitted that the Applicant has co-operated with the Investigating Officers and custodial interrogation of the Applicant is not required as he is willing to repay the amounts received from the banks.

6. The learned Additional Public Prosecutors appearing in these Applications have produced for my perusal relevant material collected during the investigation. It is pointed out that some of the flats are sold by the Applicant to more than one purchasers and loan amounts are received in case of some flats by the Applicant from more than one banks. Reliance is placed on search report obtained by the first informant United Western Bank Ltd in one of the Applications. It is submitted that offence involves number of sale transactions by the Applicant and several bogus flat sale transactions are involved and therefore, custodial interrogation of the Applicant in all cases will be necessary as the offence relates to

public money. It is stated that the offence is not confined to the flats mentioned in the F.I.Rs and investigation reveals that the Applicant has cheated several other banks.

7. I have considered the submissions. Perusal of the papers pertaining to investigation shows that there is a prima facie material on record to show that the Applicant has sold certain flats in respect of which loan was taken from the banks, to more than one persons. The case of the Applicant is that the flat purchasers voluntarily cancelled the agreements and only thereafter the Applicant sold the same flats to new purchasers and only after verification of documents, loans have been released by the banks in favour of the subsequent purchasers. Notes of the search produced during the investigation prima facie show that in case of atleast some flats, successive sale agreements have been executed in favour of more than one purchasers. Some flats are mortgaged in favour of more than one bank and loan amounts have been released in respect of the same flats favour of the Applicant by more than one bank. This is not a case which relates to a single transaction. There are large number of transactions in respect of different purchasers and different Nationalised Banks are

involved from whom loans are taken by the flat purchasers. The disbursement of loan amounts has been made in favour of the Applicant. There is prima facie material on record to show that even in case of flats in respect of which according to the Applicant the sale transaction were cancelled, the Applicant received the amount of loan from bank on the basis of loan granted to the original purchaser and he has also received loan amount granted to subsequent purchaser of the same flat. The learned Senior Counsel Shri. Gupte tried to point out that to one of the banks the Applicant forwarded the cheques, but the cheques have not been encashed.

8. The material collected during the investigation prima facie shows involvement of the Applicant in the offence. Considering the large number transactions involving different banks, it is impossible to say that custodial interrogation of the Applicant is not required. The allegations are of the grave nature. The Apex Court has held that gravity of allegations and need for custodial interrogation are the only factors which are required to be considered while granting Anticipatory Bail. In this case, the offence relates to public money and the first information reports are lodged by the Banking

Instutitions. Considering the serious nature of offence, Anticipatory Bail cannot be granted on assurance that the entire loan amount will be repaid within six months or eight months.

9. Hence, no case is made out for grant of Anticipatory Bail. Applications are rejected. At this stage, the learned Senior Counsel submitted that ad-interim relief granted earlier be allowed to continue for a reasonable time to enable the Applicant to take appropriate steps in the matter. The said prayer is opposed by the State. Considering the fact that ad-interim relief was granted by this Court and on many occasions, the Applications were required to be adjourned as Investigating Officers were not available, limited protection deserves to be granted in favour of the Applicant. Hence, time is granted to the Applicant to surrender before the Investigating Officer till 26th October, 2005. It is needless to say that observations which are made in these Applications are only for limited purpose of considering the prayer for Anticipatory Bail.

JUDGE